

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CN1005
)	EEOC NO.: N/A
EMILY SCRIPP)	ALS NO.: 09-0609
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Munir Muhammad, Diane M. Viverito, and Nabi Fakroddin, upon Emily Scripp's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009CN1005; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF JURISDICTION

In support of which determination the Commission states the following findings of fact and reasons:

1. On September 19, 2008, the Petitioner filed an unperfected charge of discrimination with the Respondent, which she subsequently perfected on October 24, 2008. The Petitioner alleged that Lieutenant Ronald Pontecore of the Chicago Police Department ("Pontecore") discharged her on June 27, 2008, because of her sex, female, in violation of Section 2-102(A) of the Illinois Human Rights Act (the "Act"). On September 22, 2009, the Respondent dismissed the Petitioner's charge for Lack of Jurisdiction. On October 26, 2009, the Petitioner filed a timely Request.
2. On April 28, 2008, the Chicago Police Department ("CPD") hired the Petitioner as a Probationary Police Officer.
3. In April of 2008, Pontecore was employed by the CPD Education and Training, and his duties included training the CPD's probationary police officers.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

4. On June 27, 2008, the CPD discharged the Petitioner for failing to meet the physical requirements of her position.
5. In her charge, the Petitioner alleged the decision to discharge her was made by Assistant Deputy Superintendent Matthew Tobias, in consultation with Pontecore.
6. Further, for the first time in her Request, the Petitioner argues that Pontecore aided and abetted Tobias in committing a violation of the Act, in violation of 775 ILCS 5/6-101(B) of the Act. The Petitioner now argues that Pontecore can be held personally liable for her alleged unlawful termination pursuant to Section 6-101(B).
7. In its Response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for lack of jurisdiction because Pontecore is not the Petitioner's "employer" within the meaning of the Act, and only employers can be held liable for employment discrimination. The Respondent also argues the Commission cannot consider the Petitioner's new aiding and abetting claim because the Commission is limited to reviewing claims that were made in the original charge.

CONCLUSION

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of jurisdiction.

First, the Commission finds that Pontecore is not an employer within the meaning of the Act. Section 2-101(B)(1)(a) of the Act defines an "employer" as any person who employed 15 or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation. See 775 ILCS § 5/2-101(B)(1) (West 2010). There is no evidence Pontecore meets this definition. Rather, both Pontecore and the Petitioner were the employees of CPD.

In an employment discrimination claim brought pursuant to the Act, only the employer can be held liable under the Act, unless the claim involves allegations of sexual harassment. See Anderson v. Modern Metal Products, 305 Ill.App.3d 91, 711 N.E.2d 464 (2nd Dist. 1999).

Therefore, because Pontecore was not the Petitioner's employer, and the Petitioner's claim did not involve allegations of sexual harassment, the Respondent did not err in dismissing the charge against Pontecore.

Second, on a request for review, the Commission is limited to reviewing claims that were raised in the charge. The Commission cannot review claims that are raised for the first time on a request for review. See 775 ILCS § 5/ 8-103 (West 2010). Therefore, the Commission can make no determination regarding the Petitioner's new allegations of aiding and abetting.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Lieutenant Ronald Pontecore as Respondents with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

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Entered this 12th day of May 2010.

Commissioner Munir Muhammad

Commissioner Diane Viverito

Commissioner Nabi Fakroddin